



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2018

CORAM:

THE HON'BLE MR.JUSTICE **G.R.SWAMINATHAN**

CRL.O.P.(MD)No.11901 of 2013

R.M.John

... Petitioner / Revision Petitioner/
Complainant

-vs-

G.Gurudhas

... Respondent/ Respondent/Accused

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in Crl.R.P.No.17 of 2010 on the file of the District and Sessions Judge, Kanyakumari at Nagercoil, dated 01.02.2013 in S.T.C.No.2808 of 2007 on the file of the Judicial Magistrate No.II, Nagercoil, dated 05.02.2010, to set aside the same and consequential to restore the S.T.C.No.2808 of 2007 on the file of the Judicial Magistrate No.II, Nagercoil for trial.

For Petitioner : Mr.F.Deepak

For Respondent : Mr.G.Aravinthan

ORDER

The petitioner in this Criminal Original Petition is the complainant in S.T.C.No. 2808 of 2007 on the file of the learned Judicial Magistrate No.II, Nagercoil. It is a private complaint filed under Section 138 of the Negotiable Instruments Act. The complainant was absent on 05.02.2010. Since there was no representation on the side of the complainant, the learned Judicial Magistrate No.II, dismissed the complaint by order dated 05.02.2010. Questioning the same, the complainant filed a revision petition before the learned Sessions Court. The Sessions Court also confirmed the order passed by the Trial Court. Hence, the complainant is before this Court.

2.The learned counsel appearing for the accused/respondent herein pointed out that in view of the bar under Section 397(3) Cr.P.C, this Criminal Original Petition is not maintainable. He also placed reliance on the decision of the Hon'ble Supreme Court



reported in (2016) 13 SCC 243 in the case of V.K.Bhat vs. G.Ravi Kishore and another.

3.The Submission made by the learned counsel for the respondent is highly attractive. But, then this petition has been filed under 482 of Cr.P.C. The contention of the learned counsel for the respondent is that the statutory bar set out in Section 397(3) of Cr.P.C cannot be over come by filing the petition under Section 482 of Cr.P.C.

4. Section 397 (1) of Cr.P.C., confers revisional jurisdiction on the High Court and the Sessions Court. Section 397 (2) states that this revisional power shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. Section 397 (3) of Cr.P.C states that if an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them. Thus a statutory bar against invocation of revisional jurisdiction under certain circumstances is engrafted in Section 397 (2) and also Section 397 (3) of Cr.P.C.

5.The Hon'ble Supreme Court in the case of Madhu Limaye Vs. State of Maharashtra, reported in 1979 (4) SCC 551 observed that if for the purpose of securing the ends of justice, interference by the High Court is absolutely necessary then, nothing contained in Section 397 (2) can limit or affect the exercise of the inherent power by the High Court. This Principle was approvingly cited in the recent 3 Judges' Bench decision of the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt.Ltd Vs. CBI (BATCH) reported in 2018 (5) SCALE 269. If exercise of jurisdiction under Section 482 of Cr.P.C cannot be said to be barred by invocation of Section 397(2), then by way of analogy and applying the same reasoning, one can clearly conclude that jurisdiction under Section 482 of Cr.P.C can be exercised notwithstanding the bar set out under Section 397 (3) of Cr.P.C. Of course, as observed in the aforesaid decision, this jurisdiction has to be sparingly exercised and only in appropriate cases.

6.Coming to the facts of the present case, it is seen that the present complaint suffered dismissal, in view of the non appearance of the complainant on the hearing date. Section 256 of Cr.P.C states that if the complainant is absent or the complainant does not appear, the Magistrate shall acquit the accused. No other course of action is contemplated. Since the dismissal of the complainant is clearly contrary to what is envisaged in Section 256 of Cr.P.C., this Court is of the view that this is a case, in which, the jurisdiction under Section 482 of Cr.P.C can very well be exercised. Therefore, this Court is constrained to set aside the order dated 05.02.2010, passed by the learned Judicial Magistrate, dismissing S.I.C.No: 2808 of 2007. The order passed by the Sessions Court is also set aside.



7.This Criminal Original Petition is allowed accordingly.

Sd/-
Assistant Registrar (Crl.Side)

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/True Copy/

Sub Assistant Registrar

To

- 1.The District and Sessions Judge, Kanyakumari.
- 2.The Judicial Magistrate No.II, Nagercoil.

+1cc to Mr.G.Aravinthan, Advocate, SR.No.60811
+1cc to Mr.F.Deepak, Advocate, SR.No.60521

CRL.O.P. (MD) No.11901 of 2013
10.04.2018

DAS

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